Supreme Court, U.S.
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No. 88-1965

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners

vs.

CITY OF COVINGTON, THOMAS EPPERSON,
TODD FINAN, HENRY WARDEN, JOSEPH CONDIT,
JOHN ELFERS, DOUGLAS STEPHENS,
PEOPLES LIBERTY BANK, RICHARD NELSON,
RALPH HAILE AND UNNAMED PERSONS

Respondents

REPLY OF RESPONDENTS PEOPLES LIBERTY BANK, RICHARD NELSON AND RALPH HAILE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is there a Federal question presented so as to justify review by this Court?
2. Have all issues alleged been previously fully adjudicated?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	I
TABLE OF AUTHORITIES	III
COUNTERSTATEMENT	2
ARGUMENT	4
CONCLUSION	7
APPENDIX	1a-8a

TABLE OF AUTHORITIES

Cases	Page
Patricia Thompson and Eddie Thompson, Jr. v. *Richard S. Nelson, et al.*, (no Fed. Supp. published opinion) 109 F. 2s 1509 (6th Circuit), Cert. Denied 464 U.S. 829, 104 S. Ct. 104, 78 L. Ed. 2d 108	6
Patricia Thompson and Eddie Thompson, Jr. v. *Peoples Liberty Bank*, 451 U.S. 909, 101 S. Ct. 1977, 68 L. Ed. 2d 297	6

Rules of Court

Supreme Court Rule 17(1) 1-2, 4

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SUPREME COURT RULES

Sup. Crt. Rule 17(1)

> "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

COUNTERSTATEMENT OF CASE

Petitioners filed a 96-paragraph rambling pro se Complaint against numerous individuals, a municipality and a bank, alleging various acts of "wrongdoing" that supposedly took place years before. Motions were filed to dismiss the action as barred by the applicable Kentucky Statutes of Limitations.

As it pertains to Respondents Peoples Liberty Bank, Richard Nelson and Ralph Haile, the Kentucky State Trial Judge dismissed Petitioners' Complaint with the following language (Petitioners' Appendix p. 24a):

"5. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action against Peoples Liberty Bank, Richard Nelson and Ralph Haile set forth in the complaint, and specifically in paragraphs 8, 9, 14, 17, 18, 19, 20, 21, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 49, 53 and 54. All of the alleged actions by these named defendants are alleged to have occurred

more than five years prior to the filing of this action (September 12, 1986). All of plaintiffs' causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120.

Therefore, IT IS ORDERED as follows . . .

E. Good cause having been shown by the record and motion of Hon. Richard S. Nelson, counsel for himself, Peoples Liberty Bank and Ralph Haile, said named defendants' motion for an extension of time in which to answer or otherwise plead in this case is SUSTAINED. Said defendants' CR 12.02(F) motion is SUSTAINED, and Peoples Liberty Bank, Richard Nelson and Ralph Haile are hereby DISMISSED from this action and shall recover of plaintiffs their costs herein expended. . . ."

The Kentucky Court of Appeals affirmed the dismissals (Petitioners' Appendix p. 29a) and the Kentucky Supreme Court denied discretionary review (Petitioners' Appendix p. 33a). This Petition for Writ of Certiorari followed.

ARGUMENT

1. IS THERE A FEDERAL QUESTION PRESENTED SO AS TO JUSTIFY REVIEW BY THIS COURT?

The answer is "no".

While not totally exclusive, there are, under the Rules of this Court, guidelines which are designed to aid the Court in using its discretion in reviewing writs of certiorari. First, Sup. Crt. Rule 17(1)(a) is of no relevance, dealing solely with petitioners from Federal Courts. Second, Sup. Crt. Rule 17(b) and (c) are further unfulfilled by the Petition at Bar as there has been no federal question ruled on by any state court below. Indeed, the Order of the Trial Court at issue (Petitioners' Appendix p. 22a) herein was one of pure procedure and violated no rights of the Petitioners, Federal or otherwise.

The only "Federal Question" raised by Petitioners is that the state trial refused to give full faith and credit to a prior Judgment of the Kentucky Court of Appeals. That allegation is unsupported by the record but even if it were somehow correct, Article IV of the U.S. Constitution requires full faith and credit by one state to the judicial procedures of every *other state* (Petitioners' Appendix p. VII).

Obviously, no federal question exists.

2. HAVE ALL ISSUES ALLEGED BEEN PREVIOUSLY FULLY ADJUDICATED?

The answer is "yes".

The following constitute only a portion of the prior vexatious and harassing litigation involving Petitioners' claims against Respondents and others, fully adjudicated, and growing out of the same operational facts for which Petitioners again complain in the case at Bar:

Eddie Thompson, Jr. and Patricia Thompson v. *Peoples Liberty Bank and Trust Company*, Kenton Circuit Court No. 31053 and 33430; appeal dismissed by Kentucky Court of Appeals in CA-2149-MR (2/7/78); Motion to Reconsider denied by Kentucky Court of Appeals (3/30/78); discretionary review denied by Kentucky Supreme Court (8/24/82); cert. denied by U.S. Supreme Court in Case No. 82-835 (2/22/83).

Eddie Thompson, Jr. and Patricia Thompson v. *Peoples Liberty Bank and Trust Company*, Kenton Quarterly Court No. 9817; Kenton Circuit Court No. 33430; Kentucky Court of Appeals No. 79-CA-1456-MR; discretionary review denied by Kentucky Supreme Court in No. 80-SC-440-D (11/18/80); cert. denied by U.S. Supreme Court in Case No. 80-1358 (4/20/81).

Thompson v. *Peoples Liberty Bank*, U.S. District Court, Eastern District of Kentucky, Case No. 81-5169, affirmed by Sixth Circuit Court of Appeals in 705 F.2d 458.

Thompson v. *Woltenberg*, U.S. District Court, Eastern District of Kentucky, No. 80-3411, affirmed by Sixth Circuit Court of Appeals, 665 F.2d 1047. (Woltenberg is a Deputy Kenton District Clerk.)

Thompson v. *Wood*, U.S. District Court, Eastern District of Kentucky, No. 80-3598, affirmed by Sixth Circuit Court of Appeals in 698 F. 2d 1223. (Wood is Kenton County Clerk).

Thompson v. *Peoples Liberty Bank*, U.S. District Court, Eastern District of Kentucky, No. 78-3525, affirmed by the Sixth Circuit Court of Appeals in 601 F.2d 590.

Thompson v. *Peoples Liberty Bank*, U.S. District Court, Eastern District of Kentucky, No. 78-3169, affirmed by Sixth Circuit Court of Appeals in 586 F.2d 844.

Thompson v. *Kenton County Board of Elections Commission, Kentucky*, 535 S.W. 2d 68, appeal dismissed, cert. denied 96 S. Ct. 873, 423 U.S. 1083, 47 L. Ed. 94.

Thompson v. *Judge Daniel Goodenough and Sheriff James Crowell*, U.S. District Court, Eastern District of Kentucky, No. 78-58. (Trial Judge in foreclosure action and Kenton County Sheriff in writ of possession enforcement.)

Thompson v. *Peoples Liberty Bank, Richard Nelson, et al*, U.S. District Court, Eastern District of Kentucky, No. 77-73, affirmed in Sixth Circuit Court of Appeals in No. 78-3169.

Thompson v. *Richard Nelson*, U.S. District Court, Eastern District of Kentucky, No. 78-57.

Thompson v. *Richard Slukich, Peoples Liberty Bank, Ralph Haile and Richard Nelson*, U.S. District Court, Eastern District of Kentucky, No. 78-70.

Thompson v. *Peoples Liberty Bank*, Kentucky Court of Appeals, No. 81-CA-1671-MR.

In particular, the following cases fully disposed of the allegations of Petitioner:

Patricia Thompson and Eddie Thompson, Jr. v. *Richard S. Nelson, et al.*, (no. Fed. Supp. published opinion) 109 F.2d 1509 (6th Circuit), Cert. Denied, 464 U.S. 829, 104 S. Ct. 104, 78 L. Ed. 2d 108.

Patricia Thompson and Eddie Thompson, Jr. v. *Peoples Liberty Bank*, 451 U.S. 909, 101 S. Ct. 1977, 68 L. Ed. 2d 297.

As Judge William O. Bertelsman of the United States District Court for the Eastern District of Kentucky found, "the record clearly discloses the legality of the foreclosure and subsequent eviction [and] has already been extensively litigated in state court" (these Respondents' Appendix p. 2a). In addition, the same Honorable Court stated:

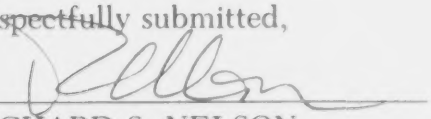
> "However, the record clearly discloses the legality of the foreclosure and subsequent eviction. It (sic) clear that the plaintiff's case consists simply of naked allegations and nothing more and was from its inception totally frivolous." (These Respondents' Appendix p. 7a).

It is respectfully submitted that the time has arrived to put a stop to this harassment by the Petitioners and abuse of the court system.

CONCLUSION

It is clear that no federal question has been presented to justify a review by this Court and, further, the issues alleged have been previously fully adjudicated in both state and federal courts. The within Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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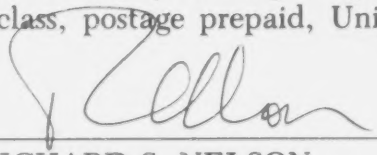
CERTIFICATION

Pursuant to Supreme Court Rule 28, I hereby enter my appearance in respect to the within cause and I do further certify that copies of the within Reply Brief were served this 26th day of June, 1989, upon Stephen T. McMurtry, Esq., 308 Greenup Street, Covington, KY 41011; Martin Huelsman, Esq., 88 Thompson Avenue, Fort Mitchell, KY 41017; Frederic J. Cowan, Attorney General and Ms. Patricia Todd Thomas, Assistant Attorney General, Capitol Building, Frankfort, KY 40601-3494; Mr. John C. Scott, 403 Wapping Street, Frankfort, KY 40601; Patricia Thompson, P.O. Box 1221, Covington, KY 41012; and Eddie Thompson, Jr., P.O. Box 1221, Covington, KY 41012, by mailing 3 copies of same to each of them, first class, postage prepaid, United States Mail.



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APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CONSOLIDATED CIVIL ACTION
NOS. 78-57, 78-70 and 79-40

No. 78-57
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

RICHARD NELSON
Defendant

No. 78-70
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

RICHARD SLUKICH, ET AL.
Defendant

No. 79-40
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL.
Defendant

ORDER
(Filed October 29, 1980)

On September 26, 1980, this court consolidated the three above actions brought by the plaintiff, Eddie Thompson. All three actions alleged a conspiracy to deprive the plaintiff of his Civil Rights through the foreclosure of the plaintiff's home and subsequent eviction of the plaintiff. The plaintiff has additionally alleged various acts of harassment, all done in concert to deprive him of his Civil Rights. One of these alleged acts of harassment, the use of excessive force in effecting an arrest by defendant police officers Epperson, Tucker, and Finan was tried by a jury on October 23rd and 24th of 1980, with the plaintiff appearing pro se. The jury returned for the defendants. The court is now faced with the question of the liability of the remaining individual and institutional defendants on cross-motions for summary judgment.

The court in an exhaustive search of the record, and after extensive pretrial conferences with the parties, concluded that the plaintiffs were attempting to convert a state action into a federal one by conclusionary allegations of conspiracy and race-motive animus. The plaintiff's were given 30 days from September 26, 1980, to file additional memoranda and affidavits in opposition to the defendant's motion for summary judgment and to allow the plaintiffs to flesh out their allegations concerning conspiracy and race-motiviated actions.

The plaintiffs have filed extensive affidavits and memoranda in support of their position. After careful scrutiny of these documents, the court must conclude the plaintiffs have no evidence to offer of either racial animus or a conspiracy to deprive the plaintiffs of their constitutional rights. It is clear that there is no dispute as to the material facts of the case. The plaintiffs would have this court believe that the foreclosure and eviction were deliberate conspiracies against them based simply on the fact such events took place. As the record clearly discloses the legality of the foreclosure and subsequent eviction has already been extensively litigated in state court. Therefore, the court being advised,

IT IS ORDERED as follows:

1. That the defendants' motion for summary judgment are granted.

2. That the plaintiff's motion for summary judgment is denied.

3. That the defendants have 10 days from the date of this order to file a request for attorney's fees.

A separate judgment has been filed concurrently herewith.

This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION 79-40

EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL.
Defendant

JUDGMENT
(Filed October 29, 1980)

In accordance with the order entered concurrently herewith,

IT IS ORDERED AND ADJUDGED that the complaint be, and hereby is, dismissed, with prejudice, at the cost of the plaintiff.

This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CONSOLIDATED CIVIL ACTION
NOS. 78-57, 78-70 and 79-40

No. 78-57
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

RICHARD NELSON
Defendant

No. 78-70
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

RICHARD SLUKICH, ET AL.
Defendant

No. 79-40
EDDIE THOMPSON, JR., ET AL.
Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL.
Defendant

ORDER
(Filed December 18, 1980)

This matter comes before the court on the motions of the various defendants, in the above consolidated actions, seeking an award of attorney's fees pursuant to 42 U.S.C. § 1988.

On September 26, 1980, this court consolidated the three above actions brought by the plaintiffs Eddie Thompson, Jr. and his wife, Patricia Thompson. All three actions alleged a conspiracy to deprive the plaintiffs of their civil rights in the foreclosure of the plaintiffs' home and subsequent eviction of the plaintiffs. The plaintiffs additionally alleged various acts of harassment, all allegedly done in concert to deprive them of their civil rights. One of these alleged acts of harassment, the use of excessive force in effecting an arrest by defendant and police officers Epperson, Tucker and Finan was tried by a jury on October 23rd and 24th of 1980, with the plaintiffs representing themselves. The jury returned for the defendants. On October 29, 1980, this court granted summary judgment on behalf of all remaining defendants.

Now, the defendant Richard Slukich, by and through his counsel, Steven D. Wolnitzek, seeks an award of attorney's fees totaling $2,628.13 for work expended in Civil Action No. 78-70.

The defendants People's Liberty Bank and Richard Haile, by and through their counsel Richard S. Nelson, seek an award of attorney's fees for work expended in Civil Action Nos. 78-70 and 79-40. In addition, James Liles and Bernard Smith seek through and by their counsel Richard Nelson, attorney's fees for work expended in Civil Action 79-40. In the same motion the defendant Richard Nelson seeks in propria persona, attorney's fees expended in his own defense in Civil Action 78-57, 78-70 and 79-40. In addition, the above defendants make an argument that fees for numerous other vexatious actions brought by the plaintiffs against these and other defendants should be awarded to the defendants through the inherent powers of the court. However, the court is not inclined to consider awarding fees for any but the above consolidated cases.

The defendants Epperson, Finan and Tucker, by and through their counsel Steven McMurtry, seek attorney's fees for work expended in Civil Action 79-40.

The Supreme Court in *Christiansburg Garment Company* v. *E.E.O.C.*, 434 U.S. 412 (1977) set out requirements for an

award of attorney's fees under 42 U.S.C. § 2000E-5(k) to the defendants when they prevail. The language of that statute is identical to that of 42 U.S.C. § 1988 and the Supreme Court's construction of 42 U.S.C. § 2000E-5(k) is applicable to the awarding of attorney's fees to defendants under § 1988. *Lopez* v. *Arkansas City Independent School District*, 570 F.2d 541 (1978). According to *Christiansburg*, a prevailing defendant can recover attorney's fees only if the claim made by the plaintiff was frivolous, unreasonable or groundless.

In the matter of the claim against the defendants Epperson, Tucker and Finan, it is not clear that the claim was completely frivolous, unreasonable or so groundless as to grant the defendants attorney's fees. The court must note that the claim arose out of an incident of confused circumstance. While the jury after one-and-a-half hours of deliberation came to the conclusion that the plaintiff's claim was meritless, the court is loathe to engage in *post hoc* reasoning on the basis of the jury's verdict. *Christiansburg Garment Company* v. *E.E.O.C.*, at p.421.

However, an award of attorney's fees is in order for the remaining defendants. On October 29, 1980, the court granted the defendant's motion for summary judgment. After an exhaustive search of the record and extensive pretrial conferences with the parties disclosed that the plaintiffs were attempting to convert a state action into a federal one by naked, conclusionary allegations of conspiracy and race motive animus. It is clear that there is no true dispute as to the material facts of this case. The plaintiffs would contend that the foreclosure and eviction were deliberate actions taken against them by a conspiracy of the defendant. However, the record clearly discloses the legality of the foreclosure and subsequent eviction. It clear that the plaintiff's case consists simply of naked allegations and nothing more and was from its inception totally frivolous.

The court is reluctant to assert attorney fees against individuals. However, its dockets are too overburdened to entertain vexatious and harrassing litigation. The plaintiffs have filed 15 lawsuits in this court since 1977, almost all of

them frivolous in nature. There are too many people who have invoked the jurisdiction of the court in good faith to permit them to be deprived of the justice to which they are entitled because substantial amounts of the court's time are occupied by appurious lawsuits of the kind involved here. Therefore, the court being advised,

IT IS ORDERED as follows:

1. That in Civil Action No. 78-57 defendant Richard Nelson be awarded $960 for attorney's fees.

2. That in Civil Action No. 78-70 the defendant Richard Slukich be awarded $2,628.13 for attorney's fees; and the defendants People's Liberty Bank & Trust Company, Richard V. Haile, Jr., James Liles, Bernard Smith, and Richard S. Nelson be awarded attorney's fees for a total of 32 hours of work on the above consolidated cases at a rate of $60 per hour for a total of $1,920.

3. That in Civil Action No. 79-40 the motion for an award of attorney's fees for the defendants Epperson, Tucker and Finan be, and hereby is, denied.

4. That the judgment be, and hereby is, joint and several against the plaintiffs, Eddie Thompson, Jr. and Patricia Thompson.

This 8th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE